No. 82-1795

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1983

CAPITAL CITIES CABLE, INC.; COX CABLE OF OKLAHOMA CITY, INC.; MULTIMEDIA CABLEVISION, INC.; AND SAMMONS COMMUNICATIONS, INC.,

*Petitioners,*

v.

RICHARD A. CRISP, DIRECTOR, OKLAHOMA ALCOHOLIC BEVERAGE CONTROL BOARD,

*Respondent.*

**On Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit**

## BRIEF OF AMICI CURIAE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION AND MAGAZINE PUBLISHERS ASSOCIATION IN SUPPORT OF PETITIONERS

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## STATEMENT OF INTEREST

The American Newspaper Publishers Association and Magazine Publishers Association support the position of the petitioners in the above-captioned case.[1]

[1] Copies of written consent of the parties have been filed with the Clerk of the Court, as required by Rule 36 of the Court.

The American Newspaper Publishers Association ("ANPA") is a national trade association representing approximately 1,400 newspapers which constitute approximately 90 percent of the total daily and Sunday newspaper circulation, and a substantial portion of the weekly newspaper circulation, in the United States. Magazine Publishers Association ("MPA") is a national trade association representing approximately 200 publishing companies which publish more than 800 consumer oriented magazines.

The members of these organizations carry advertising that would be prohibited under the type of state laws here in question. They also rely on the inclusion of advertising in their publications to support their vital First Amendment functions of providing news and information to the public. Improper application of this Court's precedents regarding First Amendment protection of commercial speech therefore threatens the members' ability to disseminate both commercial and noncommercial information. Amici do not question the existence of a state interest in regulating the sale and consumption of alcoholic beverages under the Twenty-first Amendment. They do, however, challenge as unconstitutional Oklahoma's method of advancing that interest by the outright prohibition of advertising. They also challenge as unconstitutional the indirect enforcement of that ban through the media which do not manufacture or sell the products, or even originate the advertising, but only carry it as part of their publications and programming.

If the decision below is permitted to stand, it will encourage other states to seek advancement of local non-speech policies through similar prohibitions of speech, and similar enforcement against the media, ultimately interfering with the ability of these organizations to perform their vital First Amendment functions.

## SUMMARY OF ARGUMENT

The Court of Appeals for the Tenth Circuit reversed a District Court order declaring unconstitutional Oklahoma's ban

of liquor ads on cable television. In reaching this result, the decision below distorted the principles and misapplied the tests developed by this Court to provide First Amendment protection for commercial speech.

More importantly, it failed to recognize the critical relationship, highlighted by this case, between the dissemination of commercial and noncommercial speech in the affected media. If the wine advertisements at issue here are banned, it is not only those commercial messages, but also the news, entertainment and other noncommercial programming which they accompany, that may not be received by Oklahoma residents. This is a result which cannot be supported by whatever interest the state may have in minimizing alcohol abuse.

However, it is not only the prohibition of advertising and its impact on other speech that is of grave concern to publishers. It is also the reasoning of the court below, which threatens to undermine this Court's efforts over the past 10 years to carefully refine and reinforce First Amendment protection for commercial speech. If the decision is allowed to stand, it will encourage other states to engage in far-reaching regulation of advertising involving not only alcoholic beverages, but other legal products and services as well, under the misconception that legislative presumptions will be upheld by the courts if only the interest of the state is "substantial" enough. The end result cannot help but be a reduction in the amount of information, both commercial and noncommercial, available to the public.

## ARGUMENT

### I. The Decision Below Distorts the Principles and Tests Protecting Commercial Speech.

In the past decade this Court has developed substantial protection for the very kind of commercial speech banned by the State of Oklahoma. *Compare Valentine v. Chrestensen*, 316 U.S. 52 (1942) *with Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). The Court "review[s] with special care regulations [such as this] that

entirely suppress commercial speech in order to pursue a nonspeech-related policy." *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. at 566, n. 9. And, as a result of this review, "in recent years, this Court has not approved a blanket ban on commercial speech unless the expression itself was flawed in some way, either because it was deceptive or related to unlawful activity." *Id.*

The fundamental principle may be summarized in this Court's language from *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 505 (1981):

> A State may not completely suppress the dissemination of truthful information about an entirely lawful activity merely because it is fearful of that information's effect upon its disseminators and its recipients.

The decision below violates this principle by approving a ban on truthful commercial speech concerning products lawfully sold in the State of Oklahoma. The decision is particularly disturbing because, in reaching its holding, the court distorted the test developed by this Court to guard against such a result. In *Central Hudson* this Court stated the following four-part test for the protection of commercial speech:

> (a) is the speech lawful and not misleading;
>
> (b) is the asserted governmental interest substantial;
>
> (c) does the regulation "directly advance the governmental interest asserted"; and
>
> (d) is the regulation "not more extensive than is necessary to serve that interest"?

447 U.S. at 566.

The Court in *In re R.M.J.*, 455 U.S. 191 (1982) recently noted the critical importance of the last two elements of this test and further refined them:

> [T]he State must assert a substantial interest and the interference with speech must be in proportion to the interests served. [Citation omitted.] Restrictions

> must be *narrowly drawn*, and the State lawfully may regulate *only to the extent* regulation furthers the State's substantial interest.

455 U.S. at 203 (emphasis added).

The decision below in effect disregards these last two elements of the *Central Hudson* test.

**A. The Court Below Improperly Permitted the Twenty-first Amendment to Predetermine Its Analysis Under *Central Hudson*.**

Under *Central Hudson*, a restriction on commercial speech cannot be upheld unless it is shown to "directly advance" the governmental interest asserted. 447 U.S. at 566. The court below considered it sufficient that the two were "reasonably related." Appendix A to Petition at 22a.

This disregard of the standard prescribed in *Central Hudson* reflects the Court of Appeals' heavy reliance on the Twenty-first Amendment to support its analysis and conclusions under the four-part test; this despite its pro forma acknowledgement that the Twenty-first Amendment should not unduly influence the analysis. *Compare* Appendix A to Petition at 17a *with* App. A at 23a-24a.

The Twenty-first Amendment does give states considerable power over the manufacture and sale of liquor, and permits strict regulation of the circumstances under which it may be sold. *See New York State Liquor Authority v. Bellanca*, 452 U.S. 714, 715 (1981); *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980); *Ziffrin, Inc. v. Reeves*, 308 U.S. 132, 138 (1939). However, the decisions of this Court construing that authority also recognize that the Twenty-first Amendment cannot be allowed to diminish the constitutional rights protected by the Bill of Rights and the Fourteenth Amendment, specifically including the First Amendment. *Larkin v. Grendel's Den, Inc.*, ____ U.S. ____, 103 S. Ct. 505, 510 n.5 (1982); *Craig v. Boren*, 429 U.S. 190, 206-207 (1976); *Wisconsin v. Constantineau*, 400 U.S. 433, 436 (1971).

The reasoning of these cases does not conflict with, but rather parallels, the approach of the *Central Hudson* test. The state's authority under the Twenty-first Amendment should be considered in determining (1) whether the speech is lawful and (2) whether the governmental interest asserted is substantial. These two elements of the test, after all, focus on the state's interest in regulating. The third and fourth elements, on the other hand, focus on First Amendment interests which limit the state's authority to regulate. They require distinct and separate inquiries into (3) whether the regulation directly advances the state interest and (4) whether the restriction is drawn as narrowly as possible. The balance between any governmental interest and the First Amendment is thus built into the test itself and can only be achieved by careful application of each distinct part of the test as a separate inquiry.

In the decision below, the Court of Appeals permitted the weight of the Twenty-first Amendment to influence its analysis and conclusion at each step of the way. On the issue of whether the regulation directly advances the state interest, the Court found:

> [*P*]*articularly in light of the additional deference owed to the legislature as a result of the Twenty-first Amendment*, . . . that prohibitions against the advertising of alcoholic beverages are reasonably related to reducing the sale and consumption of those beverages and their attendant problems.

Appendix A to Petition at 22a (emphasis added). On the fourth inquiry under *Central Hudson*—whether the regulation is no more extensive than necessary to serve the state's interest—the Court found:

> *With particular emphasis on the power of Oklahoma under the Twenty-first Amendment*, . . . that the advertising prohibitions here are no more extensive than is necessary to serve Oklahoma's asserted interest.

Appendix A to Petition at 24a (emphasis added). The end result is a confusion and serious misapplication of the Central Hudson test that results in no test at all, but instead a subjective ad hoc "balancing" with the scales irreversably weighted in favor of Twenty-first Amendment considerations. [2]

If the commercial speech doctrine painstakingly crafted by this Court is to to survive as a meaningful tool for analysis, the objectivity required by the *Central Hudson* test must be preserved. The existence of a constitutionally endorsed state interest should not excuse the State of Oklahoma or the Court of Appeals below from proper application of the test. If Oklahoma's ban against advertising does not, in fact, directly advance the state's interest, or if the ban does extend further than is necessary, then the First Amendment considerations inherent in these two elements of the test dictate that the restriction should fall, and the source of the state's interest should not change the result.

### B. The Court Below Did Not Adequately Consider the Breadth of the Prohibition and Its Impact.

Under *Central Hudson*, a restriction on commercial speech must be no broader than necessary to serve the state interest. 447 U.S. at 564, 566; *In re R.M.J.*, 455 U.S. at 203. The court below engaged in no meaningful analysis of the breadth of the challenged prohibition, and it virtually ignored the need to consider less restrictive alternatives for advancing the state's interest. Appendix A to Petition at 23a-24a.[3] Instead, it simply

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[2] A similar approach was followed by the 5th Circuit in its recent decision *Dunagin v. City of Oxford, Mississippi*, 1983 F.2d Adv. Sh. 470 (October 31, 1983) *(en banc)*. The Court of Appeals in that case, while adhering more closely to the *Central Hudson* test than the court below, began its analysis by suggesting that the challenged ban on outdoor ads for alcoholic beverages enjoyed a "presumption in favor of validity" under the Twenty-first Amendment. *Id.* at 478.

[3] Other alternatives are available, for example: state-sponsored ads about the dangers of alcohol, or, as in *Central Hudson*, promoting conservative consumption; affirmative educational and remedial measures to combat the causes of the state's alcohol problem; or other measures, such as strict enforcement of drunk driving laws and laws against serving intoxicated individuals.

sanctioned the broadest and least constitutionally acceptable alternative, a total ban on this type of commercial expression by anyone other than a retailer within his store.

The court focused only on the fact that some alcoholic beverage advertising is allowed and that "[Appellees] are free to carry other forms of advertising," [4] and sidestepped the proper question of whether the prohibition, itself, goes further than necessary to advance the state's interest. On this question the court again simply deferred to the Twenty-first Amendment.

A more serious question under this part of the analysis is whether the prohibition reaches too broadly in terms of not only what, but also whom it restricts. Under the specific terms of the Twenty-first Amendment, the state might be able to argue that it has the power to regulate advertising as incidental to the manufacture, transportation, importation, and sale of alcoholic beverages. But the regulation here goes much further. The media against whom this prohibition is imposed are engaged in none of these activities. The media simply carry the advertisements, among many other commercial messages, as an integral part of their publications and programming. Through them, the State of Oklahoma seeks to enforce its policies against persons whose advertising activities are otherwise beyond the state's reach. [5]

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[4] Appendix A to Petition at 23a:

> Even though Appellees are completely prohibited from rebroadcasting alcoholic beverage advertising, they are free to carry other forms of advertising . . . On-premises advertising is allowed, the rebroadcast of beer advertising is not prohibited, and alcoholic beverage advertising in out-of-state printed publications distributed in Oklahoma is allowed.

None of these observations explains why a total prohibition of alcoholic beverage advertising on cable is necessary. In fact, the presence of beer advertising and unrestricted out-of-state print advertising may suggest the opposite conclusion.

[5] Use of the media to enforce state policy raises additional First Amendment concerns, as Mr. Justice Stewart observed in *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*, 413 U.S. 376, 403 (1973) (Stewart, J., dissenting).

In so doing, however, the state has had to face the practical reality that these efforts can reach only so far. Wine and liquor advertising carried in newspapers, magazines, and direct (i.e., non-cable) broadcasts, originating outside the state are all received by Oklahoma residents without restriction. Beer advertising has been and continues to be carried in all media in Oklahoma.[6]

From these facts, one might conclude that Oklahoma's prohibition of wine advertising carried by in-state media is not truly *necessary* to advance the state's interest, but done only as a matter of convenience. Is it "necessary" to ban out-of-state advertising carried by broadcasters and cable systems, where apparently it is not in the case of print media? Is it "necessary" to ban advertising for wine, but not for beer?

In the name of the Twenty-first Amendment, the Court of Appeals appeared willing to uphold a sweeping regulatory scheme that reaches to whatever practical limits of enforcement the state finds convenient. The court did not, however, address the question of whether a narrower restriction might serve the state's interests as well, or whether the arguable benefit of preventing advertising in certain media, while necessarily permitting the same advertising in other media, is sufficient to justify the serious restriction of First Amendment rights that results.

## II. Enforcement of Oklahoma's Advertising Ban Against the Media Restricts Noncommercial Speech as Well.

### A. Oklahoma's Advertising Ban Unconstitutionally Burdens Dissemination of Other Protected Speech.

In addition to being unnecessarily broad by its terms, this scheme of regulation is seriously overbroad in its effect. The

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[6] As noted more fully in the Brief of Amicus Curiae American Civil Liberties Union, the unrestricted presence of other alcoholic beverage advertising calls into question the court's conclusion that the prohibition of the same advertising on electronic media "directly advances" the state's interest. Given the amount of advertising of *all* types of liquor reaching Oklahoma's residents, the prohibition of wine advertising seems a rather *indirect* means of encouraging moderation.

declared intent of the State of Oklahoma is to prohibit only commercial speech, and, ostensibly, only commercial speech within Oklahoma.[7] The discussion thus far has focused on the unconstitutional method employed by the state in pursuit of that intent. However, a more serious and far-reaching defect results from the state's attempts to enforce its policy against the media carrying the prohibited advertisements as an integral part of other commercial and noncommercial programming. By imposing the advertising ban on local cable television systems, Oklahoma interferes with the dissemination of not only the particular commercial speech here in question, but also the full range of other programming—news, information, entertainment, and other commercial messages—which is transmitted with the wine advertising from sources outside the state.

The district court found, as an uncontroverted fact, that "[T]here exists no feasible way for Plaintiffs to block out the [wine] advertisements" carried as a part of broadcast signals distributed by the petitioner cable companies. Appendix G to Petition at 41a. The only way for the Oklahoma cable systems to comply with the law, therefore, would be to eliminate wine-sponsored programming in its entirety from those signals,[8] or to discontinue carriage of those broadcast signals altogether. Either of these steps would constitute an obvious state-compelled restraint on noncommercial speech, clearly impermissible under the First Amendment.

Oklahoma's advertising ban also interferes with the rights of its residents to receive, and the concomitant right of out-of-state programmers to disseminate, commercial and

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[7] That Oklahoma may not intend to suppress distribution of news and ideas also cannot save the restriction from unconstitutionality, for governmental acts which substantially burden the exercise of First Amendment rights cannot be justified by the mere fact that the intent may be proper or the result unintended. *See Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, ____ U.S. ____, 103 S. Ct. 1365 (1983); *Buckley v. Valeo*, 424 U.S. 1 (1976).

[8] Even if such excision of selected commercials were possible, it would pose additional problems under 47 CFR § 76.55(b), which requires that broadcast signals be carried in full, "without deletion or alteration of any portion," and under the Copyright Act, 17 U.S.C. § 111(c)(3).

noncommercial information intended to reach its audience as an integrated whole. The First Amendment "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . ." *Associated Press v. United States,* 326 U.S. 1, 20 (1945), and the public has a "collective right to have the [broadcast] medium function consistently with the ends and purposes of the First Amendment." *Red Lion Broadcasting Co., Inc. v. FCC,* 395 U.S. 367, 390 (1969). To the extent the enforcement of one state's peculiar requirements interferes with the fulfillment of these goals, it imposes an unconstitutional burden on the dissemination of information under the First Amendment.

It is important to emphasize that the First Amendment interest at stake here is much more than the advertisers' right to distribute, and the public's right to receive, commercial speech concerning the virtues of a particular brand of wine. The prohibition imposed by the State of Oklahoma in this case affects dissemination of the entire range of programming—news, information, entertainment, and other commercial messages—which might accompany the prohibited advertising. Whatever arguments may be advanced in support of Oklahoma's regulation of commercial speech, it is clear that the state may not impose such burdens on the dissemination of other information protected by the First Amendment in the absence of the most compelling state interests. *See Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue,* ____ U.S. ____, 103 S. Ct. 1365 (1983); *Buckley v. Valeo,* 424 U.S. 1 (1976); *Murdock v. Pennsylvania,* 319 U.S. 105, 112-13, 116-17 (1943); *Grosjean v. American Press Co.,* 297 U.S. 233 (1936).

The Court is thus faced with two separate inquiries: First, can the total prohibition of commercial speech be justified under a proper application of Central Hudson; and second, regardless of the first answer, can the resulting burden imposed on dissemination of noncommercial speech be justified under the stricter standard? *See Metromedia, Inc. v. City of San Diego,*

453 U.S. at 512-13 (plurality opinion).[9] The court below did not even consider the latter question, but as the following discussion demonstrates, that too must be answered in the negative.

### B. The Reasoning of the Court Below Threatens Dissemination of Other Advertising and Information by All Media.

It may be tempting to view this case as only a "Twenty-first Amendment case," [10] or only a "cable television case," and to assume that exceptions can be carved out that will not affect analysis of other state interests or other media. However, the uncomfortable fact is that the position adopted by the State of Oklahoma and the reasoning applied by the Tenth Circuit, if allowed to stand, create a pattern for future regulation of commercial speech and other members of the media that is not so easily confined.

As a matter of discretion, the Oklahoma Attorney General has not prosecuted Oklahoma distributors of out-of-state newspapers and magazines that include advertisements for alcoholic beverages. However, the presumptions and conclusions adopted by the Court of Appeals in upholding a ban on such

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[9] Although the plurality's distinction between commercial and non-commercial speech in *Metromedia* might be criticized, (*See, e.g.*, concurring opinion of Mr. Justice Brennan, 453 U.S. at 521-22), the instant case presents a situation in which a bifurcated analysis is clearly warranted. Unlike the ordinance in *Metromedia*, the Oklahoma ban, by its terms, prohibits only commercial speech. The effect on non-commercial speech is a direct consequence of that restriction, which must be subjected to the same scrutiny as any other non-speech related governmental action that impinges on First Amendment rights.

[10] The court's initial discussion of *Queensgate Investment Co. v. Liquor Control Commission*, 433 N.E.2d 138 (Ohio), *appeal dismissed*, 103 S. Ct. 31 (1982) seems to support such a limited interpretation. *See* Appendix A to Petition at 7a-9a, 13a-17a. However, the court also clearly acknowledges that "[t]he Twenty-first Amendment did not grant to the states the authority to abrogate individual rights guaranteed by the Fourteenth Amendment," Appendix A to Petition, at 17a, and proceeds to work through the *Central Hudson* test with passing references to the Twenty-first Amendment. The result is a rationalization of advertising prohibitions that could be applied in any case where a court believed "additional deference" was due to the decisions of a legislative or regulatory body.

advertisements included in out-of-state cable signals could apply in exactly the same way to prohibit such ads in imported newspapers and magazines. The nature of the speech is the same, the nature of the state interest is the same, and the lower court's misconstruction of the other elements of the *Central Hudson* test presumably also would be the same. Thus, out-of-state newspapers and magazines could be placed in the same extraordinary quandary as the cable companies by the decision below.

The newspapers and magazines now sent by mail and private carrier to homes, businesses, and newsstands in Oklahoma are fully integrated publications, edited to present the reader with a useful and complete package of news, opinion, and a wide range of other information, both noncommercial and commercial, in a manageable physical form. As a practical matter, distributors cannot be expected to excise liquor advertisements from the *Kansas City Star,* the *New York Times,* or *Time* magazine. Therefore, barring a portion of that advertising in Oklahoma would have the effect of barring these publications in their entirety. The state of Oklahoma apparently recognizes this fact.

However, if the validity of Oklahoma's enforcement efforts against the media is allowed to turn on the theoretical possibility of "blacking-out" portions of an electronic signal, whatever practical protection may now exist for these publications will dissolve when they become available to the reader as electronic impulses delivered over the air or through a cable. It is only a matter of time before these and similar publications are available on the television screen in the form of satellite-delivered, computer-retrieved electronic publications. Under the Court of Appeals' analysis, any and every state in the union could then claim the right to select and control the particular commercial messages its citizens will be permitted to receive within the state.

The Court need not venture into the future (however near it may be) to find a similar but less dramatic result. If Oklahoma's enforcement policy against out-of-state advertisers through its local media is upheld, what is to prevent other states from exercising similar controls, but in their own individualized

form? Issues relating to alcoholism treatment, drunk driving, and alcohol abuse in general have recently come to the fore as highly publicized and, inevitably, highly political issues. In most states, these concerns have resulted in the classic First Amendment response—i.e., more information and discussion on the subject, not less. However, if Oklahoma's ban on advertising is upheld, will the elected representatives in state legislatures around the country be able to resist the temptation to adopt their own particular restrictions on commercial speech in this area, in response to the political pressures beginning to emerge?

If not, members of the media will face a profusion of conflicting regulations, as predicted by this Court in striking down the prohibition of abortion advertising in *Bigelow v. Virginia*, 421 U.S. 809, 828-29 (1975):

> If application of this statute were upheld under these circumstances, Virginia might exert the power sought here over a wide variety of national publications or interstate newspapers carrying advertisements similar to the one that appeared in Bigelow's newspaper. . . . Other states might do the same. The burdens imposed on publications would impair, perhaps severely, their proper functioning. *See Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 257-258 (1974).

A much more serious question is thus suggested by the broad reasoning of the decision below—*i.e., can* its reasoning be confined to the facts at hand? Although the Court of Appeals appears to rely heavily on the Twenty-first Amendment to justify its departure from proper commercial speech analysis, it also finds support from loose and selective application of language from this Court's decision in *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981). From these two sources, the court below was able to conclude that no more than a "reasonable relationship" between the regulation of commercial speech and advancement of a substantial state interest may be required; that substantial deference should be paid to the state legislature's findings regarding the need for regulation; and, most disturbing, that the *advertising* of a given product is

automatically related to the state's interest in addressing whatever problems may result from misuse of the product.

The danger in the decision below is the ease with which a total ban on any given class of advertising could be justified by the assertion of any substantial state interest. Under the Court of Appeals' misapplication of *Central Hudson* and *Metromedia*, all that is required is a reasonable relationship between the prohibition of advertising and the presumed reduction in sales of products that contribute to the perceived problems. The extreme reach of such reasoning is suggested by the court's own observation that "the entire economy of the industries that bring these challenges is based on the belief that advertising increases sales." Appendix A to Petition at 22a. From this it would follow that there always will be a "reasonable relationship" between any advertising sought to be banned and any social interests related to use or misuse of the products or services advertised. Such a construct does not depend on the presence of a Twenty-first Amendment interest, but could encourage the prohibition or severe restriction of advertising of any number of products and services.

It is a fact of economic life that advertising revenues have a direct effect on the ability of broadcasters and publishers to maintain news organizations and to provide high-quality information and editorial content.[11] If advertisers are forced to confront individual state-by-state restrictions on their commercial messages in the national and regional media, a significant source of financial support for news and editorial activities may well be lost. This close interdependence of commercial and noncommercial speech in our system of communication cannot be ignored in considering the impact of the type of blanket prohibition of advertising upheld by the Tenth Circuit in this case. As this Court noted in *Bigelow v. Virginia*, 421 U.S. 809, 828 (1975), such a ban when imposed on the media "incur[s] more serious First Amendment overtones" than do restrictions applied only to the advertiser.

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[11] *See Columbia Broadcasting Systems, Inc. v. Democratic National Committee*, 412 U.S. 94, 117 (1973); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 257 n.22 (1974).

## CONCLUSION

The decision of the Court of Appeals, if allowed to stand, creates a dangerous precedent for suppressing commercial speech without analysis either of its alternatives or of its actual effects. The Court's failure to consider the impact of the Oklahoma law on programming and publications in which the advertising appears, particularly in the coming age of electronic information, opens the door to increasing and divergent regulation of the media. In short, the implications of the decision as it stands, like the effect of the regulation it upholds, reach far beyond the limited area of alcoholic beverage advertising on cable television to broadly threaten the access of each state's residents to the nationwide marketplace of ideas.

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